

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN JACKSON,

Defendant-Appellant.

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UNPUBLISHED

March 4, 2003

No. 238175

Wayne Circuit Court

LC No. 01-001345

Before: Neff, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Defendant was convicted after a jury trial of felony murder. MCL 750.316(1)(b). The predicate felony, first-degree child abuse, was not charged separately. Defendant was sentenced to the mandatory term of life in prison without parole. He appeals as of right and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant murdered his seven-month-old daughter by placing a rag in her mouth and placing tape over her mouth and nose. The autopsy also revealed head injuries. The child died of a closed head injury and asphyxia due to mechanical obstruction of the airway.

On appeal, defendant claims error in the jury instructions and in the introduction of evidence, specifically photos of the child's body during autopsy. We find no error.

Defendant first argues that the trial court committed reversible error in failing to instruct that first-degree child abuse, MCL 750.136b(2), is a specific intent crime. While we agree with defendant's argument that the offense is a specific intent crime, *People v Gould*, 225 Mich App 79, 84-88; 570 NW2d 140 (1997), we disagree that the trial court failed to properly instruct the jury on this issue.

Defendant did not object to the jury instructions and therefore has failed to preserve his claim of error. MCR 2.516; MCL 768.29; *People v Carines*, 460 Mich 750, 767; 597 NW2d 130 (1999). However, our review of the record reveals that the trial court did properly instruct the jury and there is therefore no error.

After instructing the jury on the elements of felony murder, the court instructed on the predicate felony of first-degree child abuse. Included in the latter was the following language: “Second, that the defendant either *knowingly or intentionally* caused serious physical harm to Miracle Jackson [the victim].” (Emphasis added.) The trial court clearly instructed the jury on the specific intent element of first-degree child abuse. There was no error.

Defendant next argues error in the admission of four photographs in the prosecutor’s case-in-chief. Again, we find no error.

Four photographs are in issue. One shows the victim after her body was removed from the plastic bag in which defendant disposed of it and shows that defendant had placed tape over both her nose and mouth. The second shows the victim after the tape was removed from her nose and mouth and it shows a blue cloth protruding from her mouth. The third shows the size of the rag which was found in the victim’s mouth. The fourth shows the injuries inflicted by forcing the rag into the victim’s mouth.

Defendant was charged with and convicted of both first-degree premeditated murder, MCL 750.316(1)(a)<sup>1</sup>, and felony murder, MCL 750.316(1)(b). Defendant’s intent was a contested issue at trial. The prosecution argued that the photos were relevant to defendant’s intent to commit both premeditated murder and first-degree child abuse. Defendant denied that he taped over both the victim’s nose and mouth and that he intended to either kill or seriously harm her.

We agree with the trial court that the photos were relevant because they were evidence of defendant’s intent, they showed that he was not truthful when he gave a statement that he did not tape both the victim’s mouth and nose and they showed the injuries defendant inflicted on the victim. Moreover, we find that the photos were not unduly prejudicial and were not unnecessarily gruesome. MRE 401, 402, 403; *People v Mills*, 450 Mich 61, 66-71; 537 NW2d 909 (1995), mod 450 Mich 1212; 539 NW2d 504 (1995).

Affirmed.

/s/ Janet T. Neff  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly

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<sup>1</sup> This conviction was later set aside.